

REMARKS

The present Amendment is in response to the Office Action mailed May 15, 2006, in the above-identified application.

In the present Amendment, Applicants have amended claims 22, 38, 40 and 42. Claims 1-21 were previously canceled. claims 22-44 remain pending in the application.

In the Office Action, the Examiner objected to claim 42 as having an informality. In response, claim 42 has been amended to delete the first occurrence of "at least" in line 3 of the claim.

The Examiner rejected claims 38 and 39 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicants have amended claim 38 to change the recitation "the outer surface" to --an outer surface--. In view of the above-noted amendment, Applicants respectfully assert that claims 38 and 39 now satisfy the requirements of 35 U.S.C. §112, second paragraph, and are otherwise allowable.

The Examiner provisionally rejected claims 22-44 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of co-pending U.S. Application No. 11/037,921. In response, Applicants have filed herewith a Terminal Disclaimer to overcome U.S. Application No. 11/037,921.

The Examiner rejected claims 22-24 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,676,702 to Ratron. Referring to FIG. 1 thereof, Ratron discloses a disc prosthesis 1 including two opposing plates 10, 11. The first plate 10 has a vertical partition 12 that is offset laterally with respect to the middle of the first plate 10. The vertical partition extends outwardly on each side of its principal axis to secondary partitions 13, 14 that are joined with the second plate 11. Applicants respectfully assert that claim 22 is unanticipated by Ratron because the cited reference neither

teaches nor suggests an intervertebral spacer device including first and second plates and "at least one arched strip spring disposed between the inner surfaces of said first and second plates, said at least one arched strip spring having lateral ends and a peak located equidistant between the laterals ends, wherein the lateral ends of said at least one arched strip spring are attached to said second plate and the peak of said arched strip spring is attached to said first plate." Claims 23-24 are unanticipated, *inter alia*, by virtue of their dependence from claim 22, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 22-26, 31-34 and 40-43 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,610,093 to Pisharodi. Referring to FIG. 3 thereof, Pisharodi discloses a vertebral disc stabilizer 10 including an upper bracket 22 for engaging a first vertebral body, a lower bracket 24 for engaging a second vertebral body and a disc 26B disposed between the upper and lower brackets 22, 24. Referring to FIG. 4B, in one embodiment, Pisharodi discloses an implant having the upper and lower brackets shown in FIG. 3 and a disc 26D having leaf springs 64B. In the rejection, the Examiner asserts that the disc 26D can serve as a plate that engages a vertebral body. The Examiner is assigning the disc 26D a function which is neither taught nor suggested by Pisharodi. Applicants respectfully assert that disc 26D cannot be used as a plate having "an outer surface adapted to engage" a vertebral body as required by claim 22.

Applicants respectfully assert that claim 22 is unanticipated by Pisharodi because the cited reference neither discloses nor suggests "at least one arched strip spring . . . , wherein the lateral ends of said at least one arched strip spring are attached to said second plate and the peak of said arched strip spring is attached to said first plate." Clearly,

Pisharodi provides no teaching or suggestion that the peak of the leaf type spring 64B is "attached to said first plate" as required by claim 22. For these reasons, claim 22 is unanticipated by Pisharodi and is otherwise allowable. Claims 23-26 are unanticipated, *inter alia*, by virtue of their dependence from claim 22.

Independent claim 31 is unanticipated by Pisharodi for the reasons set forth above with respect to claim 22. Specifically, independent claim 31 is unanticipated by Pisharodi because the cited reference neither discloses nor suggests an intervertebral spacer including a first plate and a second plate and "a plurality of arched strip springs coupling said first and second plates . . . , wherein each of said arched strip springs has lateral ends attached to said second plate and a peak located between the lateral ends that is attached to said first plate." Clearly, Pisharodi neither discloses nor suggests that the peaks of the leaf type springs 64B (FIG. 4B) are "attached to said first plate" as required by claim 31. For these reasons, claim 31 is unanticipated by Pisharodi and is otherwise allowable. Claims 32-34 are unanticipated, *inter alia*, by virtue of their dependence from claim 31, which is unanticipated for the reasons set forth above.

Independent claim 40 is unanticipated by Pisharodi for essentially the same reasons set forth above with respect to independent claims 22 and 31. Specifically, independent claim 40 is unanticipated by Pisharodi because the cited reference neither discloses nor suggests an intervertebral spacer device including a first plate and a second plate and "at least one arched strip spring disposed between the inner surfaces of said first and second plates, said at least one arched strip spring having lateral ends that are attached to said second plate and a central portion located equidistant from the lateral ends that is attached to said first plate." Clearly, Pisharodi neither

discloses nor suggests an arched strip spring having a "central portion located equidistant from the lateral ends that is attached to said first plate" as required by independent claim 40. For these reasons, independent claim 40 is unanticipated by Pisharodi and is otherwise allowable. Claims 41-43 are unanticipated, *inter alia*, by virtue of their dependence from claim 40, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 28, 36 and 37 under 35 U.S.C. §103(a) as being unpatentable over Pisharodi in view of U.S. Patent No. 6,156,067 to Bryan et al. The Examiner asserts Bryan teaches an intervertebral implant having a threaded fastener for attaching a spring to intervertebral plates. In response, Applicants respectfully assert that Pisharodi and Bryan do not teach or suggest that the "second plate includes threaded holes and the lateral ends are aligned with the respective threaded holes in said second plate and secured thereto using threaded fasteners." In addition, Applicants respectfully assert that claim 28 is patentable, *inter alia*, by virtue of its dependence from claim 22, and claims 36 and 37 are patentable, *inter alia*, by virtue of their dependence from claim 31. Moreover, Bryan does not overcome the deficiencies noted above in Pisharodi.

The Examiner rejected claims 29-30, 38-39 and 44 under 35 U.S.C. §103(a) as being unpatentable over Pisharodi in view of U.S. Patent No. 5,370,967 to Baumgartner. Referring to FIG. 1A thereof, the Examiner has cited Baumgartner as teaching an intervertebral disc implant whereby at least one of the plates has a deflectable wire mesh 42. In response, Applicants respectfully assert that claims 29 and 30 are patentable, *inter alia*, by virtue of their dependence from claim 22, claims 38 and 39 are patentable, *inter alia*, by virtue of their dependence from claim 31 and claim 44 is patentable, *inter alia*, by virtue

of its dependence from claim 40. Moreover, Baumgartner does not overcome the deficiencies noted above in Pisharodi.

The Examiner also rejected claims 27 and 35 under 35 U.S.C. §103(a) as being unpatentable over Pisharodi in view of U.S. Patent No. 5,989,291 to Ralph et al. The Examiner has cited Ralph as teaching that the peak of a spring is attached to a plate using a threaded fastener 205 (FIG. 9). In response, Applicants respectfully assert that claim 27 is patentable, *inter alia*, by virtue of its dependence from claim 22 and claim 35 is patentable, *inter alia*, by virtue of its dependence from claim 31. In addition, Ralph does not overcome the deficiencies noted above in Pisharodi.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 28, 2006

Respectfully submitted,

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